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January 6, 2017

Hon. Sarah Netburn, Magistrate Judge  
United States District Court for the Southern  
District of New York  
500 Pearl Street  
New York, NY 10007

Re: In Re: Terrorist Attacks on September 11, 2001, 03-md-1570-GBD-SN  
Bauer, et al. v. Al Qaeda Islamic Army, 02-cv-07236-GDB-SN

Dear Magistrate Judge Netburn:

It has come to our attention that motions for the entry of partial final default judgments seeking awards of solatium damages on behalf of many of the victims of the September 11, 2001 terror attacks were recently filed in *Burnett v. Islamic Republic of Iran, et al.*, (15-cv-9903-GBD-SN). We are writing to make Your Honor aware that, at the request of this firm, Judge Daniels has already issued solatium damage awards to several of the individuals identified in these motions in his October 31, 2016 Order. A list of these individuals is attached to this letter. We are advising the Court of this so as to avoid the entry of duplicate default judgment Orders.

As this Court is aware, final judgments were sought by many of the family members of the terror attack victims as a prerequisite to the submission of an application to the U.S. Victims of State Sponsored Terrorism Fund ("USVSST") (Pub. L. No. 114-113, § 404, 129 Stat. 2242, 3007-17 (2015) (codified at 42 U.S.C. § 10609)). The Special Master of the USVSST Fund set December 1, 2016 as the last day to file applications<sup>1</sup> for consideration of payments from the currently available funds, and December 19, 2016 was the statutory deadline for the Special Master to authorize initial payments from the Fund. Although the Fund will continue to accept applications after the December 1, 2016 deadline, eligible claimants who file after this date will not receive payments in the initial round of payments expected to be made in the first quarter of 2017.

Therefore, in accordance with these deadlines and previous Orders issued by the Court, my firm filed a motion for partial final judgment on October 7, 2016 on behalf of forty-four (44) wrongful death personal representatives seeking solatium damage awards for all of the immediate

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<sup>1</sup>December 9, 2016 was the last day to correct any deficiencies in applications filed in the USVSST Fund. <http://www.usvsst.com/important.php>.



family members of their 44 decedents against the Republic of Iran. (ECF Doc. No. 3352). This motion identified each of the spouses, children, parents and siblings of the 44 decedents murdered in the terror attacks, including individuals for whom the same request is now being made in the recent *Burnett* motions. On October 31, 2016, Judge Daniels granted our Order and entered solatium damage awards on behalf of all of these individuals. (ECF Doc. No. 3387).

Upon receipt of this Order, my firm immediately began submitting applications to the USVSST Fund on behalf of each of the immediate family members identified in the Court's October 31, 2016 Order, going to great lengths to insure that each application was filed in advance of the December 1, 2016 deadline. Thereafter, we worked tirelessly with officials from the U.S. Department of Justice (DOJ) responsible for processing the claims to identify and correct any deficiencies prior to the December 9, 2016 correction deadline. During the month of December, we received letters from the Fund confirming the eligibility of each claim, including claims on behalf of the individuals identified on the attached list. We are in contact with the Special Master and officials from the DOJ, and are awaiting notice from them as to whether any money will actually be paid to any of the family members of the victims.

Following the conference before Your Honor in October, and again on December 13, 2016, we spoke with representatives from Motley Rice and told them we had sought and received an Order for solatium damage awards for individuals that may be represented by their firm. On December 16, 2016, a second motion was filed in *Burnett* seeking solatium awards. (ECF Doc. No. 72). Although this motion was not filed through the MDL docket, we became aware of its filing and the potential for the entry of duplicate default judgments several days later. On December 21, 2016, we wrote to the firm providing them with a list of individuals for whom we had already secured partial final judgments and filed applications with the USVSST Fund. A third motion was filed in *Burnett* on January 4, 2017 seeking solatium damage awards and this motion also contains a request for the entry of solatium damage awards on behalf of individuals who have already been granted these awards. (ECF Doc. No. 74).

We have a long standing and friendly relationship with Motley Rice, and write this letter simply to avoid confusion before this Court. We have had several conversations with the firm about potential overlap in the filings. I recently left messages for Donald Migliori who is traveling and I expect to hear from him shortly. I am certain that once we are able to speak, we will be able to coordinate efforts so as not to burden the Court with duplicate filings.

Respectfully,

A handwritten signature in blue ink that reads 'DM Capone'.  
Dorothea M. Capone

DMC:cml

cc: Donald A. Migliori, Esq. (via email)  
Jody Westbrook Flowers, Esq. (via email)



**Burnett II**

Marion Foster  
Theresa Tarantino  
Kenneth T. Tarantino  
Victoria Melone

**Burnett III**

Alyce Goldstein  
Robert Goldstein  
Nancy E. Hannaford  
James J. Hannaford  
Patrick G. Hannaford  
Aileen Ryan  
Susan York